

City of Lafayette Staff Report

For: City Council
By: Ron Lefler, Public Works Services Manager 
Date Written: August 1, 2008
Meeting Date: August 11, 2008
Subject: Award of Contract PS 06-06; Embankment Stabilization St Mary's Road
Near Wallabi Court, Federal Aid Project ER-4433 (011)

Introduction

The work under the subject contract is for the repair of a slide which occurred on St. Mary's Road during the 2005/2006 storms. Approximately 88% of the construction costs are anticipated to be reimbursed by The Federal Highway Administration under its Emergency Relief program.

Bid Results

Five bids were received. The low bid in the amount of \$91,087.00 was from Jim Freethy Excavating, Inc.. The low bid was well below the engineer's estimate of \$ 187,550.00, the bids were as follows:

Jim Freethy Excavating, Inc.	\$ 91,087.00
Northwest Demolition, Inc.	\$ 138,400.00
Belivearu, Engineering Contractors, Inc.	\$ 168,000.00
Valentine Corporation (low bid)	\$ 173,369.00
W. R. Forde	\$ 194,735.00
Engineer's Estimate	\$ 187,550.00

Budget Impact

The total estimated cost of the project, including construction contingencies and construction engineering/inspection, is \$ 115,187.00 of which the City's share would be \$ 21,288.95. The City's share of funding for this project and reimbursable costs were included in the 2008/2009 budget under 011-360 Emergency Response.

Recommendations

1. Award Contract PS 06-06 to Jim Freethy Excavating, Inc.

City of Lafayette

Public Works Services



Embankment Stabilization - St. Mary's Road
South of Wallabi Court
PS 06-06
Federal Aid Project No. ER-4433 (011)

Contract Agreement

City of Lafayette
Embankment Stabilization - St. Mary's Road
South of Wallabi Court
PS 06-06
Federal Aid Project No. ER-4433 (011)
CONTRACT

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CITY OF LAFAYETTE

Embankment Stabilization - St. Mary's Road South of Wallabi Court PS 06-06

Federal Aid Project No. ER-4433 (011)

CONTRACT

THIS AGREEMENT is made and entered into as of August 12, 2008, 2008, by and between the CITY OF LAFAYETTE ("City") and Jim Freethy Excavating Incorporated ("Contractor").

RECITALS

- A. City desires to retain the services of Contractor to provide services for the stabilization of an embankment failure on **St. Mary's Road South of Wallabi Court, PS 06-06, ER-4433 (011)**, including, but not limited to: mobilization; traffic control and construction signage; clearing and grubbing; tree protection; excavation and backfill; down drain installation; retaining wall construction; and all other work as shown on the contract plans and as described in these Specifications to provide a complete project.
- B. Contractor has represented to City that it has the expertise, experience and qualifications to perform the services described in Paragraph A, above, and those services which are more fully described below.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements set forth below, City and Contractor agree as follow:

- 1. Contract Documents. The contract documents for the aforesaid project shall consist of the Notice to Contractors, Instruction to Bidders, Bid Proposal, General Provisions, Technical Provisions, Special Provisions, Design Drawings, and all referenced specifications, details, standard drawings, and appendices; together with this Contract Agreement and all required bonds, insurance certificates, permits, notices and affidavits; and also including any and all addenda or supplemental agreements clarifying, amending, or extending the work contemplated as may be required to insure its completion in an acceptable manner. All of the provisions of said contract documents are made a part hereof as though fully set forth herein.
- 2. Payment for Contractor's Services: Contractor agrees to receive and accept contract prices set forth in the "Bid Proposal" as full compensation for furnishing all materials and for doing all the work required for the completion of the above-stated project; also for all loss or damage, arising out of the nature of the work aforesaid, or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the City Council of the City of Lafayette, and for all risks of every description connected with the work; also for all expenses incurred by or in consequence of the suspension or discontinuance of work and for well and faithfully completing the work, and the whole thereof, in the manner and according to the plans and specifications, and the requirements of the Engineer under them.
- 3. Employment by City. --The City hereby promises and agrees to employ, and does hereby employ, the

said Contractor to provide the materials and to do the work according to the terms and conditions herein contained and referred to, for the prices hereinafter set forth, and hereby contracts to pay the same at the time, in the manner and upon the conditions herein set forth; and the said parties for themselves, their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained.

4. Worker's Compensation Insurance. By my signature hereunder, as Contractor, I certify that I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self insurance in conformance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract. Limits shall be not less than those specified in the insurance requirements contained in the General Provisions of the Project Specifications.
5. Insurance. With respect to performance of work under this contract, Contractor shall maintain and shall require all of its subcontractors to maintain insurance as required in the General Provisions of the Standard Specifications.
6. Indemnity. Contractor shall comply with the indemnification requirements contained in the General Provisions of the Standard Specifications.
7. Assignment. This contract is not assignable nor the performance of either party's duties delegable without the prior written consent of the other party. Any attempted or purported assignment or delegation of any of the rights or obligations of either party without the prior written consent of the other shall be void and of no force and effect.
8. Non-discrimination and Disadvantaged Business Enterprise (DBE). The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as recipient deems appropriate.
9. Prompt Payment to Subcontractors and Satisfactory Performance. The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the prime contractor receives from City of Lafayette. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City of Lafayette. This clause applies to both DBE and non-DBE subcontractors.
10. Prompt Payment of Funds Withheld to Subcontractors. The City of Lafayette shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from a subcontractor with thirty (30) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the City. Federal regulation (49 CFR 26.29) requires that any delay or postponement of payment over thirty (30) days may take place only for good cause and with the City's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions, and

11. Independent Contractor. Contractor is and shall at all times remain as to City, a wholly independent contractor. Neither City nor any of its agents shall have control of the conduct of Contractor or any of the Contractor's employees, except as herein set forth. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are in any manner agents or employees of City.
12. Prevailing Wages: The State general prevailing wage rates determined by the Director of Industrial Relations are hereby made a part of this contract. It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the bid or proposal of said Contractor, then this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith. See the Caltrans HomePage on the internet for the current rates at <http://www.dot.ca.gov> or contact your District Local Assistance Engineer for a hard copy.
13. Notices. All notices and communications shall be sent to the parties at the following addresses:

CITY: Public Works Services Manager
City of Lafayette
3001 Camino Diablo
Lafayette, California 94549

CONTRACTOR: Jim Freethy Excavating, Incorporated
122 La Questa Drive
Danville, CA 64526
Phone 925-855-1475
14. Authorized Signature. Contractor affirms that the signatures, titles, and seals set forth hereinafter in execution of this contract agreement represent all individuals, firm members, partners, joint venturers, and/or corporate officers having a principal interest herein.
15. Entire Agreement; Modification. This contract supersedes any and all other agreements either oral or written, between the parties and contains all of the covenants and agreements between the parties pertaining to the work of improvements described in Paragraph A of the Recitals herein above. Each party to this contract acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that any other agreement, statements or promise not contained in this contract shall not be valid or binding. Any modification of this contract will be effective only if signed by the party to be charged.
16. Claims Procedure. In the event of a dispute between the parties regarding a) a time extension demand, b) payment arising for work performed by or on behalf of the contractor which is not otherwise

expressly provided for, or (c) an amount the payment of which is disputed by the City, the procedure in Section 10 of the City of Lafayette Standard Specifications shall be used.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Contract Agreement to be executed in duplicate by setting hereunto their names, titles, hands, and seals this 12th day of August 2008.

Contractor:

Jim Freethy Excavating, Incorporated

Name: Jim Freethy

Title: President

Contractor's License No. 718343

Federal Tax Identification No. _____

Subscribed and sworn to this ____th day of August 2008.

Notary Public _____

City of Lafayette:

Mayor: _____
Mike Anderson, Mayor of the City of Lafayette Date

Attested: _____
Joanne Robbins, City Clerk of the City of Lafayette Date